



December 4, 2001

Ms. Jacqueline Del Llano Chapa
Assistant County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2001-5625

Dear Ms. Chapa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155648.

Nueces County (the "county") received a request for a chronological bail bond report for "Luckies Bonding Service" on July 11, 2001. You advise that the county requested clarification of the dates of the bonds requested, pursuant to section 552.222 of the Government Code.¹ On July 30, 2001, the requestor narrowed the request to include bail bonds written between January 1, 1993, through August 1, 2001. Pursuant to section 552.231, the county notified the requestor on August 16, 2001, that producing the information would require the county to create a new program, and gave the estimated cost to produce the information.² The county received the requestor's response on September 26, 2001, that he would pay the estimated fee for the information. You now claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.³

¹ "If what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request." Gov't Code § 552.222(b). Similarly, "[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed[.]" *Id.*

² See Government Code § 552.231 (establishing the procedure for responding to a request for information that requires programming or manipulation of data).

³ We have considered the comments submitted by the requestor. See Gov't Code § 552.304 (providing for submission of public comment).

At the outset, we note that section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information may be withheld from the public. Section 552.301(e) provides that a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Section 552.302 provides that a governmental body's failure to timely submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released.

In this case, the county received the requestor's notification of agreement to the conditions stipulated by the county pursuant to section 552.231 on September 26, 2001. The county did not submit comments stating the reasons why the stated exception applies that would allow the information to be withheld, or a copy of the information requested until October 29, 2001. Thus, the county failed to comply with section 552.301(e). As a result, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). In this instance, you claim that the requested information is excepted under section 552.103. Our office has previously concluded that section 552.103 is a discretionary exception that does not make information confidential, and thus, does not constitute a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation, and does not itself make information confidential). Accordingly, you may not withhold the requested information under section 552.103 of the Government Code. You must release the information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Bates".

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 155648

Enc. Submitted documents

c: Mr. Bradford M. Condit
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(w/o enclosures)